

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROGER MOORE THOMAS,

Petitioner,

— against —

JOHN COLVIN, et al.,

Respondents.

OPINION AND ORDER

15 Civ. 948 (ER)

RAMOS, D.J.:

On January 27, 2015, *pro se* Petitioner Roger Moore Thomas (“Thomas” or “Petitioner”) filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 (the “Petition”). Before the Court is the Report and Recommendation (“R&R”) dated September 15, 2015 of Magistrate Judge Kevin Nathaniel Fox, to whom this matter was referred for judicial review of Thomas’s Petition and Respondents’ opposition. In the R&R, Judge Fox recommends that Thomas’s petition for a writ of habeas corpus be denied. For the reasons stated herein, the Court ADOPTS the R&R and directs the entry of judgment as recommended.

I. Background

On January 27, 2015, Thomas filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. (Doc. 1.) On March 19, 2015 the case was reassigned to this Court,¹ and on March 20, 2015, it was referred to Magistrate Judge Fox. (Doc. 9.) Respondents filed their opposition on June 18, 2015. (Doc. 15.)

¹ This case was originally assigned to the Honorable Loretta A. Preska on February 10, 2015.

On September 15, 2015, Judge Fox issued his R&R, recommending that the Petition be denied. (Doc. 21.) The R&R noted that objections, if any, would be due fourteen days from service of the R&R and that failure to timely object would preclude later appellate review of any order of judgment entered. *Id.* at 11-12. Neither party filed objections. They have therefore waived their right to object to the R&R. *See Dow Jones & Co. v. Real-Time Analysis & News, Ltd.*, No. 14 Civ. 131 (JMF) (GWG), 2014 WL 5002092, at *1 (S.D.N.Y. Oct. 7, 2014) (citing *Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir.1992); *Caidor v. Onondaga County*, 517 F.3d 601, 604 (2d Cir.2008)).

Standard of Review

A district court reviewing a magistrate judge's report and recommendation "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Parties may raise "specific," "written" objections to the report and recommendation "[w]ithin fourteen days after being served with a copy." *Id.*; *see also* Fed. R. Civ. P. 72(b)(2). A district court reviews *de novo* those portions of the report and recommendation to which timely and specific objections are made. 28 U.S.C. § 636(b)(1)(C); *see also United States v. Male Juvenile (95-CR-1074)*, 121 F.3d 34, 38 (2d Cir.1997). The district court may adopt those parts of the report and recommendation to which no party has timely objected, provided no clear error is apparent from the face of the record. *Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008). The district court will also review the report and recommendation for clear error where a party's objections are "merely perfunctory responses" argued in an attempt to "engage the district court in a rehashing of the same arguments set forth in the original petition." *Ortiz v. Barkley*, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008) (citations and internal quotation marks omitted).

II. Conclusion

No party has objected to the R&R. The Court has reviewed Judge Fox's thorough R&R and finds no error, clear or otherwise. Judge Fox reached his determination after a careful review of the parties' submissions. (Doc. 21 at 4-11.) Accordingly, the Court ADOPTS Magistrate Judge Fox's R & R dated September 15, 2015 in its entirety and Thomas's petition for a writ of habeas corpus is DENIED. The Clerk of Court is directed to enter a judgment in favor of Respondent and to close this case.

As Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253(c); *see also, e.g., Matthews v. United States*, 682 F.3d 180, 185 (2d Cir. 2012). In addition, the parties' failure to file written objections precludes appellate review of this decision. *PSG Poker, LLC v. DeRosa-Grund*, No. 06 CIV. 1104 (DLC), 2008 WL 3852051, at *3 (S.D.N.Y. Aug. 15, 2008) (citing *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)).

It is SO ORDERED.

Dated: October 16, 2015
New York, New York



Edgardo Ramos, U.S.D.J.